

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District	
Name (under which you were convicted): Paul Volkman		Docket or Case No.:	
Place of Confinement: USP Coleman I		Prisoner No.: 19519424	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted)	
v.			

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: _____

- (b) Criminal docket or case number (if you know): _____

2. (a) Date of the judgment of conviction (if you know): _____

- (b) Date of sentencing: _____

3. Length of sentence: _____

4. Nature of crime (all counts): _____

5. (a) What was your plea? (Check one)

(1) Not guilty ☐ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

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CLERK OF COURT
DISTRICT OF COLUMBIA

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐
8. Did you appeal from the judgment of conviction? Yes ☐ No ☐
9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective assistance of trial counsel for failure to present an affirmative defense

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
Counsel failed to present the affirmative defense of the legality of Movant's medical practice and legitimacy of Movant's prescriptions under the Ohio Intractable Pain Treatment Act. The evidence at trial included 1) Movant's strict enforcement of documentation requirements, 2) frequent drug testing of patients, 3) thorough examinations, and 4) whole patient care, all which tends to prove prescription legitimacy within a doctor/patient relationship. The only evidence of Movant's alleged failures to adequately exam were rendered false by impeachment and evidence of subornation of perjury. Had trial counsel presented the affirmative defense, Movant would have been acquitted of violations of the Controlled Substances Act, which exempts legitimate medical prescribers from drug trafficking liability.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: Ineffective assistance of trial counsel for failure to present the defense of entrapment by estoppel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

In his practice of medicine, Movant adhered to the provisions of the Ohio Intractable Pain Treatment Act, whose provisions were publicly, affirmatively endorsed as providing safe harbor for medical professionals by the federal Drug Enforcement Agency of the United States, the plaintiff in this case.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: Ineffective assistance of trial counsel for failure to move for mistrial after prejudicial instances of judicial misconduct

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Instances of judicial misconduct included 1) knowing subornation of perjury, 2) refusing to admit available impeachment evidence of the living status of Movant's patient following perjured testimony of patient's death, 3) use of coerced admissions and unsubstantiated indictment allegations in jury deliberations after pre-trial ruling to the contrary, 4) failure to voir dire the jury after likely contamination by public speech on evils of prescription drug abuse, 5) failure to allow cross-examination regarding qualifications of experts in violation of Daubert, and 6) failure to direct a verdict for acquittal after admitting no evidence of personal profit when "drugs for money" is a required element of every drug trafficking conviction under the CSA.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: Ineffective assistance of appellate
counsel for total breakdown of communication

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Appellate counsel refused to communicate with Movant,
and timely requests for new counsel were denied

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: _____

or any other relief to which movant may be entitled.

 Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
 and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____
 _____ (month, date, year).

9-2-16

Executed (signed) on _____ (date).

Jane Morris
 POA for Paul
 Volkman

 Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
 signing this motion. _____

IN FORMA PAUPERIS DECLARATION

 [Insert appropriate court]

* Please see attached following pages 15 thru 19

GROUND FIVE: Ineffective assistance of appellate counsel for failure to submit a revised argument on SCOTUS remand

a) supporting facts

Appellate counsel failed to submit a revised argument after SCOTUS issued a g.v.r. that granted Movant's petition for certiorari, vacated the decision of the ~~court~~ below, and remanded the case for further proceedings in light of Burke, the case that stands for the principle of law that imposition of LWOP (life without parole) sentences for convictions of drug trafficking causing death requires proof that "but-for" the defendant's conduct, the patient would have lived. The government claimed only the lesser "contributory" causation. Appellate counsel merely resubmitted an identical brief without arguing the legal insufficiency of the evidence to sustain a LWOP.

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GROUND SIX: Ineffective assistance of appellate counsel for failure to procure entire trial record

a) supporting facts

Counsel failed to order and review the transcripts of the closing arguments in which the government attorney repeatedly prejudiced the jury by asserting evidentiary conclusions, including but not limited to repeated references to patients as customers and Movant's practice as a pill-mill.

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GROUND SEVEN: Ineffective assistance of appellate counsel for failure to argue insufficiency of evidence such that no reasonable jury could convict

a) supporting facts

The trial judge admitted no evidence of Morant's personal profit and stated that fact on the record. "Drugs for money" is an essential element of every drug trafficking felony under the Controlled Substances Act. Thus no reasonable jury could return a conviction of drug trafficking.

GROUND EIGHT: Abuse of discretion by Appellate Panel for failure to comply with SCOTUS g.v.r. order

a) supporting facts

The appellate panel abused its discretion by failing to provide meaningful further proceeding upon remand when it sustained and reimposed LWOP sentences on "contributory-to" testimony of government witnesses, when SCOTUS remand in light of Burrage required proof of "but-for" causation. Thus, as a matter of law, the appeals panel abused its discretion by sustaining a legally insufficient judgment.

GROUND NINE: The body of Movant is being held in illegal confinement because the federal court has failed to establish subject matter jurisdiction over him.

a) supporting facts

This court lacks subject matter jurisdiction over Movant because verifiable facts were never substantiated tending to prove prescription illegitimacy or pill mill/customer relationship rather than legitimate doctor/patient relationship. The illegitimacy of one or several prescriptions is the evidentiary trigger for federal jurisdiction over Movant's practice of medicine. The Controlled Substances Act exempts legitimate medical prescribing from drug trafficking liability and instead defers to police power of the state, except upon a showing of facts tending to prove prescription illegitimacy. Charges against Movant of over-prescribing were falsely substantiated by suborned perjury and unqualified experts, while compliance with state law, which is a reliable indicator of prescription legitimacy, was proven by a preponderance of the evidence.